IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 269 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
KOLI CHHANA POPATBHAI & 2 - Opponent(s)

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Appearance :
MR HL JANI APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 2.
None for Opponent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 16.12.1991 passed by the learned Judicial Magistrate, First Class, Wadhwan in Criminal Case No. 196 of 1986 whereby, both the respondent – accused persons were acquitted of all the

charges levelled against them.

2.0 The brief facts of the prosecution case are as under;

2.1 On 19.02.1986, at around 1330 hrs., while the complainant was resting in the agricultural field, the respondents – accused persons came there and started quarreling with the complainant. In that process, respondent no. 1, who was having a sickle in his hands, inflicted a blow with it on the head of the complainant while respondent no. 2, who was having a stick in his hands, inflicted two blows on the body of the complainant. Original accused no. 3, who expired during the course of trial, had also inflicted stick blows on the body of the complainant. As a result of the said incident, the complainant started bleeding profusely from his head. After reaching home, the other members of his family took him to the Hospital for necessary medical treatment.

2.2 A complaint with respect to the aforesaid offence was filed against the three accused persons before Wadhwan Police Station and it was registered as I – C.R. No. 46 of 1986 for offences punishable u/s. 323, 324, 447 and 114 of the Indian Penal Coee and Section 135 of the Bombay Police Act. Necessary investigation was carried out and statements of witnesses were recorded. During the course of investigation, as sufficient material was found against the respondents – accused persons, they were arrested and, ultimately, charge-sheet was filed against them before the Court of learned J.M.F.C., Wadhwan and trial was initiated against them.

2.3 The prosecution has examined nine witnesses namely, PW – 1 Narottam Nathubhai at Exhibit – 18, PW – 2 Natubhai Vitthalbhai at Exhibit – 20, PW – 3 Batukbhai Popatbhai at Exhibit – 21, PW – 4 Amrutlal Nathubhai at Exhibit – 23, PW – 5 Narsinh Mangabhai at Exhibit – 29, PW – 6 Devjibhai Khimjibhai Vaghela at Exhibit – 37, PW – 7 Hirabhai Jivabhai at Exhibit – 40, PW – 8 Laxmanbhai Khimjibhai at Exhibit – 44 and PW – 9 Mahesh Jayantilal at Exhibit – 54 and has also relied upon documentary evidence, more particularly, the complaint at Exhibit – 19. At the end of trial, the learned Magistrate acquitted the respondents of the charges levelled against them.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in

such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 From the documents on record, it appears that there was some past enmity between the families of the complainant and the respondents – accused persons. In his cross-examination, the complainant has admitted that the complaint in question was originally filed by his father since at the relevant point of time he was unconscious and that he had signed the said complaint at a subsequent stage only. The said fact was not disputed by the father of the complainant also.

6.1 Moreover, there are material contradictions in the deposition given by the complainant before the Court below. Apart from that the prosecution has failed to prove the '*panchnama* ' of the scene of offence and the fact that the injuries in question sustained by the complainant were caused on account of the alleged blows inflicted by the respondents – accused persons. Further more, there were no eye-witnesses to the alleged incident in question.

7.0 Keeping in mind the aforesaid facts and circumstances, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

8.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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